

2011/2012 Administrative Rules

HB530: Early Preparation of Absentee Ballots

NEW RULE I. PROCESSES AND PROCEDURES FOR EARLY PREPARATION OF ABSENTEE BALLOTS (1) The processes and procedures for early preparation of absentee ballots are conducted after completion of or in conjunction with the processes and procedures in 13-13-241(1) through (7), MCA.

(2) The following processes and procedures, when implemented by the election administrator, are intended to ensure the security of ballots and secrecy of votes during the early preparation of ballots not sooner than one business day before election day. The election administrator shall ensure that the early absentee ballot preparation area:

- (a) permits observers to view all procedures;
- (b) is arranged to ensure that observers do not interfere with the procedures, view the votes cast on individual ballots, or knowingly or unintentionally compromise the secrecy of the ballots;
- (c) subject to (2)(a) and (2)(b), allows observers to be located not less than 10 feet or more than 20 feet from the boundaries of the area, or a distance determined by the election administrator based on space constraints if these distances are not feasible; and
- (d) only allows access by the following, after they have taken and subscribed the official oath prescribed under Article III, section 3 of the Montana constitution:
 - (i) officials preparing absentee ballots, who must have identifying badges so that observers can clearly identify who is authorized to prepare ballots; and
 - (ii) staff authorized by the election administrator.

(3) The election administrator shall maintain the security of the observation area as specified in (2) and by:

- (a) ensuring that all individuals in the observation area sign in before being permitted to be present;
- (b) prohibiting electronic recording devices in the observation area; and
- (c) contacting local law enforcement officials upon the occurrence of any potential or actual breach of security.

(4) The election administrator shall maintain the secrecy of votes during the early preparation of absentee ballots by:

- (a) following the procedures specified in (2) and (3);
- (b) requiring that election officials open signature envelopes and secrecy envelopes in a manner to ensure that the identity of the voter cannot be connected to the voter's ballot, either by observers, by election officials, or by any authorized staff participating in the early preparation process;
- (c) directing election officials to place the ballots in secure containers sealed with numbered security seals as necessary and when the early preparation process is completed;
- (d) handling the ballot as provided in 13-15-201, MCA, for an elector who provides identifying information on the elector's ballot and announcing that an elector has provided identifying information, but not providing the elector's identity; and
- (e) instructing election officials to secure all absentee voting materials consistent with the procedures specified in 13-15-205, MCA.

- (5) An absentee ballot early preparation reconciliation form:
 - (a) must be in the form prescribed by the Secretary of State;
 - (b) must be provided upon request to any observer;
 - (c) must be completed as specified on the form; and
 - (d) when completed, must be posted in the early preparation area at the conclusion of early preparation procedures.
- (6) Immediately after early preparation of absentee ballots and until ballot counting begins on election day, the prepared absentee ballots in secure containers with numbered security seals:
 - (a) must be placed in a secure location that prevents unauthorized access;
 - (b) must not be accessed except by at least two election officials acting together who:
 - (i) are authorized by the county election administrator;
 - (ii) have each taken and subscribed the official oath prescribed under Article III, section 3 of the Montana constitution; and
 - (iii) sign a log sheet each time that they access the secured ballots.
- (7) Election administrators shall maintain and make available for public inspection a security log in a form prescribed by the Secretary of State that accurately tracks seals placed on and removed from any early preparation absentee ballot container.
- (8) Nothing in this rule shall be construed to permit an election official to count absentee ballots or other ballots before election day.

AUTH: Chapter 331, Section 2, L. 2011

IMP: Chapter 331, Section 1, L. 2011

REASON: This proposed rule is consistent with the 2011 Legislature's rulemaking mandate in House Bill 530. The Legislature specified the rulemaking topics, mainly the security and secrecy of pre-election day absentee ballot preparation, but left the Secretary of State with the latitude to determine the actual processes and procedures. As required, the proposed rule provides for the allowable distance from the observers to the judges and ballots, the security in the observation area, secrecy of votes during the preparation of the ballots, and security of the secured ballot boxes in storage until tabulation procedures begin on election day.

The distance between observers and the judges and ballots is the least amount of space required to ensure the secrecy of the ballot while allowing the process to be as open as possible. The distances were determined by the Secretary of State in consultation with county election administrators, to maintain the security of the process, while allowing the process to be open, leaving some flexibility for physical space constraints. A lesser distance would not protect ballot secrecy while a greater distance would make observation of the procedures difficult. All election officials and election judges currently must have sworn or affirmed to the official oath before commencing election day duties. Because the legislation adopted in House Bill 530 permits election administrators and election judges to commence their ballot preparation duties before election day, the oath must be taken on or before the day of early preparation.

In order to maintain security in the observation area, the election administrator, election judges, and observers must understand who is authorized to perform specific tasks. By wearing identifying badges, everyone in the room will be able to clearly see who is allowed to prepare ballots, making it difficult for unauthorized persons to handle ballots. Likewise, by requiring observers to sign in, the election administrator will be able to identify those in the observation area and, if necessary, preserve a record of witnesses to any events. Electronic recording devices could allow the recording of information that may compromise the secrecy of votes. Ever increasing technological advancements could allow those in the observation areas to view and record information via an electronic device that the allowable distances discussed above are designed to protect. Consequently, the use of recording devices cannot be allowed.

The use of the ballot reconciliation forms as specified in the rule helps to create a written record of the number of absentee ballots issued, the number of absentee ballots received back, and the number of absentee ballots prepared. The use of a ballot reconciliation form for early preparation of absentee ballots is consistent with the administrative procedure already in place to reconcile all ballots on election day.

The use of tamper-proof, numbered security seals and restrictions on access to the absentee ballots allows for the creation of a paper trail as to who accessed the containers as well as an easily identifiable method to indicate if the containers have been opened.

2011/2012 Administrative Rules

HB99: Absentee and Mail Ballot Cleanup

44.3.1716 REJECTED BALLOTS -- HANDLING PROVIDED BY RULE

(1) remains the same.

~~(2) The unopened absentee ballot envelope of an elector who has voted in person as provided in 13-13-204, MCA, must be marked "voted in person" and must be initialed by election judges.~~

(3) (2) After being handled and marked as provided in this rule, all rejected ballots must be placed in a package or container in which the voted ballots are to be placed and the package or container must be sealed, dated, and marked. After a package or container is sealed pursuant to this section, a package or container may not be opened without a court order.

AUTH: 13-15-108, MCA

IMP: 13-15-108, MCA

REASON: Subsection (2) closely reflects 13-13-204, MCA, prior to its amendment by the 2011 Montana Legislature. Also, (2) assumes that the procedure occurs only at the polling place, but the amendment to 13-13-204, MCA, allows the procedure to occur at the county election office as well.

44.3.2014 MAINTENANCE OF ACTIVE AND INACTIVE VOTER REGISTRATION LISTS FOR ELECTIONS (1) Election administrators shall, in every odd-numbered year do at least one of the following:

(a) and (1)(b) remain the same.

(c) mail a targeted mailing to electors who failed to vote in the preceding federal general election, applicants who failed to provide required information on registration cards, and provisionally registered electors by:

(i) remains the same.

(ii) ~~comparing the list of nonvoters~~ nonvoters and applicants described in (3) against the national change of address files, followed within 30 days by the appropriate forwardable confirmation notices as described in (2) to those electors who appear to have moved from their addresses of record;

(iii) and (1)(c)(iv) remain the same.

(2) Any notices not returned or returned as undeliverable to the election administrator after using ~~the a~~ procedures provided in (1) must be followed by an appropriate confirmation notice that is a forwardable, first-class, postage-paid, self-addressed, return notice. If the elector fails to respond within 30 days of the confirmation notice, the election administrator shall move the elector to the inactive list.

(3) and (4) remain the same.

(5) The name of an elector must be moved by an election administrator from the inactive list to the active list of a county if an elector meets the requirements for registration provided in this chapter and ~~appears in order to vote or votes by absentee ballot~~ meets the requirements provided in 13-2-222, MCA, for reactivation in any election.

(6) remains the same.

AUTH: 13-2-108, MCA
IMP: 13-2-220, MCA

REASON: The amendments to (1) and (2) reflect the amendments made to 13-2-220, MCA, by the 2011 Montana Legislature. Subsection (5) is amended to reference the requirements in 13-2-222, MCA, so that the rule does not need to be updated each time the requirements in 13-2-222, MCA, are changed.

44.3.2015 LATE REGISTRATION PROCEDURES (1) through (3) remain the same.

(4) If an elector has already been sent an absentee ballot for the election, the elector may change the elector's voter registration information ~~only with respect to the next election, and may not receive another ballot from the county in which the voter is newly registered. This voter registration shall become effective on the day following the day of the election for which the elector has already been sent an absentee ballot for that election only if the absentee ballot had not been received and is designated as void.~~

(5) through (7) remain the same.

AUTH: 13-2-108, MCA
IMP: 13-2-304, 13-2-514, MCA

REASON: Subsection (4) is modified to reflect changes made to 13-2-304, MCA, by the 2011 Montana Legislature.

44.3.2016 STATEWIDE VOTER REGISTRATION DATABASE

(1)(a) through (1)(c) remain the same.

~~(d) procedures and timelines to be used by election administrators when providing the information required in 13-2-123, MCA;~~

~~(e) (d)~~ technical security of the statewide voter registration database;

~~(f) (e)~~ information security with respect to keeping from general public distribution driver's license numbers, whole or partial social security numbers, and address information protected from general disclosure pursuant to 13-2-115, MCA; and

~~(g) (f)~~ quality control measures for the system and system users.

(2) and (3) remain the same.

AUTH: 13-2-108, MCA
IMP: 13-2-108, MCA

REASON: Subsection (1)(d) is being deleted because 13-2-123, MCA, was repealed by the 2011 Montana Legislature.

44.3.2109 PROCEDURES FOR CHALLENGES

(1) An elector's right to vote may be challenged at any time by any registered elector. The challenger must fill out and sign an affidavit stating the grounds of the challenge and providing any evidence supporting the challenge to the election administrator or, on election day, to an election judge.

- (2) A challenge may be made on the grounds that the elector:
- ~~(a) is of unsound mind, as determined by a court;~~
 - ~~(b) has voted before in that election;~~
 - ~~(c) has been convicted of a felony and is serving a sentence in a penal institution;~~
 - ~~(d) is not registered as required by law;~~
 - ~~(e) is not 18 years of age or older;~~
 - ~~(f) has not been, for at least 30 days, a resident of the county in which the elector is offering to vote, unless the elector is exempt under 13-2-514, MCA, and has been a resident of the state for at least 30 days; or~~
 - ~~(g) is a provisionally registered elector whose status has not been changed to a legally registered voter.~~
- ~~(3) When a challenge has been made under this rule:~~
- ~~(a) prior to the close of registration under 13-2-301, MCA, the election administrator shall question the challenger and the challenged elector and may question other persons to determine whether the challenge is sufficient or insufficient to cancel the elector's registration under 13-2-402, MCA; or~~
 - ~~(b) after the close of regular registration or on election day, the election administrator or, on election day, the election judge shall allow the challenged elector to cast a provisional paper ballot, which must be handled as provided in 13-15-107, MCA.~~
- ~~(4) In response to a challenge, the challenged elector may fill out and sign an affidavit to refute the challenge and swear that the elector is eligible to vote.~~
- ~~(a) If the challenge was not made in the presence of the elector being challenged, the election administrator or election judge shall notify the challenged elector of who made the challenge and the grounds of the challenge and explain what information the elector may provide to respond to the challenge. The notification must be made pursuant to 13-13-301(4)(b), MCA.~~
 - ~~(b) The election administrator or, on election day, the election judge shall also provide to the challenged elector a copy of the challenger's affidavit and any supporting evidence provided.~~
- ~~(5) The Secretary of State shall provide standardized affidavit forms for challengers and challenged electors.~~
- ~~(6) (2)~~ Any challenge made under this rule shall be decided in favor of the challenged elector, unless it is demonstrated by a preponderance of the evidence that the challenged elector should not be permitted to vote.

AUTH: 13-13-301, MCA

IMP: 13-13-301, MCA

REASON: Subsections of the rule have been deleted because they needlessly repeat statutory language.

44.3.2203 FORM OF ABSENTEE BALLOT APPLICATION AND ABSENTEE BALLOT TRANSMISSION TO ELECTION ADMINISTRATOR (1) through (5) remain the same.

(6) The election administrator shall mail a forwardable address confirmation form, prescribed by the Secretary of State in January of each year to each elector

who has requested an absentee ballot for subsequent elections. The annual address confirmation form is for elections to be held between February 1 following the mailing through January of the next year. The form shall, in bold print, indicate that the elector may update the elector's mailing address using the form. The elector or elector's agent shall sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the election administrator shall remove the elector from the ~~register of electors who have requested an absentee ballot for subsequent elections~~ annual absentee list.

(7) remains the same.

(8) An elector who has been removed from the ~~register of electors who have requested an absentee ballot for each subsequent election~~ annual absentee list may later request to be mailed an absentee ballot for subsequent elections.

AUTH: 13-1-202, MCA

IMP: 13-13-211, 13-13-212, 13-13-213, MCA

REASON: The amendments to the rule are made to reflect the amendments made to 13-13-212, MCA, by the 2011 Montana Legislature to clarify that it is the annual absentee list, not the register of electors, that is referred to in this statute.

44.3.2304 PROCEDURES FOR ABSENTEE AND MAIL BALLOT VOTING - DETERMINING THE SUFFICIENCY OF IDENTIFICATION OF PROVISIONALLY REGISTERED ELECTORS (1) After completion of the signature verification procedures in 13-13-241 or 13-19-309, MCA, as applicable, the election administrator shall determine prior to an election whether a provisionally registered absentee or mail ballot elector has provided sufficient identification defined in ARM 44.3.2302(6) or eligibility information to allow a ballot to be counted:

(a) If the identification or eligibility information is insufficient, an election official or election worker shall follow procedures described in 13-13-241, MCA, and these rules to allow a provisionally registered absentee or mail ballot elector who failed to provide proper identifying information in the outer return envelope to verify eligibility to vote:

(i) a ballot cast by an elector whose voter identification information is insufficient or whose name does not appear on the precinct register must be handled as a provisional ballot under 13-15-107, MCA;

(ii) an absentee or mail ballot elector whose ballot is determined to be provisional has until 5:00 p.m. on the day after the election to provide sufficient identification or eligibility information either in person, by facsimile, by electronic mail, or by mail postmarked on the day of the election or the day after the election;

(iii) an election official or election worker shall notify the absentee or mail ballot elector by mail or by the most expedient method available that the elector's identification or eligibility information was insufficient and that the elector's ballot will be treated as a provisional ballot until the elector provides sufficient information under 13-13-114, MCA;

(iv) and (1)(a)(v) remain the same.

(b) Upon receipt of eligibility information or of one of the forms of required identification defined in ARM 44.3.2302(6), if the identification form is verified

through a voter verification process or another form of identification provided in ARM 44.3.2302(6) is sufficient:

(i) an election official or election worker shall mark on the absentee or mail ballot outer return envelope that sufficient eligibility information or identification was provided by the elector; and

(ii) remains the same.

(c) An election official or election worker who receives identification information shall retain in a sealed package the copy of identification provided by the provisionally registered absentee or mail ballot elector. The sealed package containing the copy of identification may not be opened without a court order.

AUTH: 13-13-603, MCA

IMP: 13-13-114, 13-13-201, 13-13-241, MCA

REASON: The rule is amended to reflect statutory changes made by the 2011 Montana Legislature.

2011/2012 Administrative Rules: HB91 and General Cleanup

44.3.101 INTRODUCTION, SCOPE, AND INTENT (1) The purpose of these rules is to establish minimum guidelines to be used in determining whether facilities used for voting in certain elections are accessible to electors with disabilities and elderly electors pursuant to the Americans With Disabilities Act, 42 U.S.C. 12132, and the Voting Accessibility for the Elderly and Handicapped Act, ~~Public Law 98-435, passed by the 98th Congress~~ 42 U.S.C. 1973ee, et seq.

(2) remains the same.

(3) For the purpose of clarity and throughout these rules, ~~Pub. L. 98-435 the Voting Accessibility for the Elderly and Handicapped Act~~ shall be referred to as the Voting Accessibility Act. The Americans With Disabilities Act will be referred to as the ADA.

(4) These rules shall only apply to federal elections conducted under 13-1-104(1) and 13-1-107, MCA.

AUTH: 13-1-202, 13-3-205, MCA

IMP: 13-1-202, 13-3-205, MCA

REASON: The amendment to (1) substituting the U.S.C. citation for the Public Law citation is reasonably necessary because the Act was not codified at the time the rule was originally written. The amendment to (2) is made for consistency. The amendments to (4) are to clarify that the rules only apply to federal primary and federal general elections and to conform to Secretary of State guidelines advising agencies to avoid using citation earmarks in rule text.

44.3.1701 EXAMINATION OF VOTING MACHINES AND DEVICES

(1) through (2)(b) remain the same.

~~(c) "Ballot card" means a ballot which is used for voting by the process of punching.~~

~~(d) "Ballot labels" means the cards, papers, booklets, pages or other material containing the names of offices and candidates and statements of ballot issues to be voted on.~~

~~(e)~~(c) "Ballot" includes ~~ballot cards, ballot labels and~~ paper ballots.

~~(f)~~(d) "Device" means an apparatus used for voting by the process of punching, piercing or otherwise marking of a ballot. Ballots are counted using automatic tabulating equipment.

(g) remains the same, but is renumbered (e).

~~(h)~~(f) "Examiners" means any or all persons having authority to conduct the examination under ARM 44.3.1701(3).

(i) remains the same, but is renumbered (g).

~~(j)~~(h) "Marking device" means ~~either an apparatus in which ballots or ballot cards are inserted and used in connection with a punch apparatus for the piercing of ballots by the elector or any approved device for marking a paper ballot with ink or other substance which will enable the ballot to be tabulated by means of automatic tabulating equipment.~~

~~(k) "Mechanical voting machine" means an apparatus used for voting that is self-contained using levers and providing a tabulating system within the machine.~~

(l) and (m) remain the same, but are renumbered (i) and (j).
(3) through (7) remain the same.

AUTH: 13-1-202, 13-17-103, 13-17-107, MCA
IMP: 13-1-202, 13-17-101, 13-17-103, MCA

REASON: The elimination of (2)(c), (d), and (k) and the amendments to the new (2)(c), (d), and (h) are to clarify that since punch card ballots are prohibited by 13-17-108, MCA, the reference in the rules to piercing and punching ballots should be removed. The amendment to (2)(f) is to conform to Secretary of State guidelines advising agencies to avoid using citation earmarks in rule text.

44.3.1703 CRITERIA OF CONSTRUCTION (1) through (6) remain the same.

(7) Where applicable no device shall be approved if the act of voting by an elector does not produce a visible effect upon the ballot, ~~either by piercing thereof or by application of a visible substance to the ballot.~~

AUTH: 13-17-107(1), MCA
IMP: 13-17-103, MCA

REASON: This amendment is reasonably necessary to clarify that since punch card ballots are prohibited by 13-17-108, MCA, no devices for piercing a ballot are used. The authority and implementation citations were reviewed and modified to conform to Secretary of State guidelines advising against using citation earmarks.

44.3.1714 HANDLING VOTING SYSTEM MACHINE ERROR DURING COUNT (1) During a count of paper ballots in which votes are being automatically tabulated by a voting ~~system~~ machine, if the election administrator or counting board has reason to believe that the voting ~~system~~ machine is not operating correctly, the count must be halted and the ~~system~~ machine must be tested, as applicable, in accordance with the procedures specified in the instruction manuals, user guides, and technical manuals provided by the manufacturer of the voting system, as well as the election judge handbook provided by the office of the secretary of state, except in cases in which those materials conflict with state laws or rules, in which case the laws or rules shall apply.

(2) If the test does not show any errors, the count must proceed using the voting ~~system~~ machine.

(3) If the test shows errors and the errors cannot be corrected or if a majority of the counting board agrees that the ~~system~~ machine may not be functioning correctly;

(a) if no other tested voting machine is available, votes cast on paper ballots must be counted manually in accordance with 13-15-206(2), MCA; and

(b) the vote-counting machine involved in the discrepancy in that county may not be used in another election until it has been examined and tested by a computer software expert in consultation with a voting machine vendor and approved by the secretary of state.

AUTH: 13-15-206, 13-15-209, 13-17-211, MCA
IMP: 13-15-209, MCA

REASON: The amendments to the rule title, (1), (2), and (3) substituting the words "voting machine" for "voting system" are reasonably necessary because although these terms are generally used interchangeably, the term "voting machine" is more precise than "voting system." The amendment eliminating the citation earmark in (3)(a) is to conform to Secretary of State guidelines advising agencies to avoid using citation earmarks in rule text. The proposed changes to (3)(a) and (b) are to specify that if there is a voting machine that is not operating correctly, that machine should be set aside, but if another tested voting machine is available, that machine should be able to be used instead. Otherwise, determining election results in large counties could take as long as a week or more. The machine in question should not be used in another election until it has been examined and tested. The authority and implementation statutes were reviewed and corrected.

44.3.1720 REPORTING PROCESS FOR RANDOM-SAMPLE AUDIT

(1) remains the same.

(2) The secretary of state shall post the results of the state board of canvassers' random-sample audit selections on its web site.

AUTH: 13-1-202, 13-17-503, MCA
IMP: 13-17-505, 13-17-506, 13-17-507, MCA

REASON: The amendment to (2) is reasonably necessary to clarify in rule that the Secretary of State is responsible for making a list of the State Board of Canvassers' random-sample audit selections available electronically consistent with 13-17-505, MCA. The authority and implementation statutes were reviewed and updated.

44.3.2010 APPLICANTS INELIGIBLE DUE TO AGE OR RESIDENCE REQUIREMENTS (1) An applicant for voter registration who is ~~not~~ ineligible to register because of residence or age requirements, but who will be eligible on or before election day, may apply for voter registration pursuant to 13-2-110, MCA. ~~An election official shall register the applicant as an active elector.~~

(2) For any applicants who are ineligible to register because of age requirements, an election official shall register them with a vote-eligible date that matches the individual's 18th birthday.

(3) For any applicants who are ineligible to register because of residency requirements, an election official shall register them with a vote-eligible date that matches the date the applicant will meet residency requirements.

(4) The statewide voter registration database shall not include in the register the name of any individual who will not be at least 18 years of age or who will not have been a resident of Montana for at least 30 days on or before election day.

AUTH: 13-2-109, MCA
IMP: 13-2-110, 13-2-205, MCA

REASON: These amendments are reasonably necessary to clarify that individuals who are not 18 at the time of registration are given a vote-eligible date to match their 18th birthday and that individuals who do not meet the residency requirements at the time of registration are given a vote-eligible date matching the date the applicant will meet the residency requirements.

44.3.2015 LATE REGISTRATION PROCEDURES (1) remains the same.

(a) Any elector wishing to register after noon on the day before election day may submit a voter registration application at the county election administrator's office, but the elector must appear at the county election office by 8 p.m. on election day in order to complete the late registration process and receive an absentee ballot.

(2) through (7) remain the same.

AUTH: 13-2-108, MCA

IMP: 13-2-304, 13-2-514, MCA

REASON: The amendment to (1)(a) is reasonably necessary to clarify that an elector desiring to complete the late registration process and receive an absentee ballot must appear at the county election office by the close of polls, that is 8 p.m. on election day.

44.3.2103 PRINTING OF IDENTIFICATION AND PROVISIONAL VOTING MATERIALS (1) through (1)(c) remain the same.

(d) verified and unverified provisional ballot ~~containers~~ labels;

(e) remains the same.

(f) polling place elector identification forms as defined in ARM 44.3.2102(8);
and

(g) and (2) remain the same.

AUTH: 13-13-603, MCA

IMP: 13-13-112, 13-13-603, MCA

REASON: The amendment to (1)(d) is reasonably necessary to specify that provisional ballot "labels" rather than "containers" are printed. In (1)(f), the ARM citation earmark (8) is eliminated to conform to Secretary of State guidelines advising agencies to avoid using citation earmarks in rule text.

44.3.2110 PROCEDURES AT THE POLLING PLACE FOR DETERMINING THE SUFFICIENCY OF IDENTIFICATION - PRIOR TO CASTING A BALLOT

(1) Consistent with 13-13-114, MCA, before an elector is permitted to receive a ballot or vote, the elector shall present to an election judge one of the forms of required identification defined in ARM 44.3.2102(6).

(2) and (a) remain the same.

(b) complete a polling place elector identification form, as defined in ARM 44.3.2102(8).

(3) through (3)(b) remain the same.

(c) consistent with 13-13-114(1)(~~e~~) and (~~d~~), MCA, if the identification provided differs from information in the precinct register, but an election judge determines that

the information provided is sufficient to verify the voter's identity to vote pursuant to 13-2-512, MCA, the elector may sign the precinct register, complete a transfer form or new registration form to correct the elector's voter registration information, and vote. An election judge shall write "transfer form" or "registration form" in the register beside the name of any elector submitting a form.

(4) Consistent with 13-13-114~~(3) and (4)~~, and 13-1-116, MCA, if the elector is not able to sign the elector's name to the precinct register, a fingerprint or other identifying mark may be used, or the elector may have an election administrator or election judge, or another person who has been designated by the elector as the elector's agent, provide a signature or identifying mark. If the elector fails or refuses to sign the elector's name or, if unable to write, fails to provide a fingerprint or other identifying mark, the elector may cast a provisional ballot as provided in 13-13-601, MCA, and these rules.

AUTH: 13-13-603, MCA

IMP: 13-1-116, 13-13-114, MCA

REASON: The amendments to (1), (2)(b), (3)(c), and (4) are reasonably necessary to conform to Secretary of State guidelines advising agencies to avoid using citation earmarks in rule text.

44.3.2111 PROCEDURES AT THE POLLING PLACE FOR DETERMINING ELIGIBILITY TO VOTE - PRIOR TO CASTING A BALLOT (1) An individual who provides sufficient identification specified in ARM 44.3.2192~~(6)~~, but whose name does not appear on the precinct register, shall be permitted to:

(a) through (a)(iii) remain the same.

~~(iv)~~(b) if the election official is unable to verify the individual's eligibility while the individual is at the polling place, sign the precinct register and cast a provisional ballot.

(2) Consistent with 13-13-114~~(1)(c) and (d)~~, MCA, if the information provided by the elector differs from information in the precinct register, but an election judge determines that the information provided is sufficient to verify the voter's eligibility to vote pursuant to 13-2-512, MCA, the elector may sign the precinct register, complete a transfer form or new registration form to correct the elector's voter registration information, and vote. An election judge shall write "transfer form" or "registration form" beside the name of any elector submitting a form.

(3) Consistent with 13-13-114~~(3) and (4)~~, and 13-1-116, MCA, if the elector is not able to sign the elector's name to the precinct register, a fingerprint or other identifying mark may be used, or the elector may have an election administrator or election judge, or another person who has been designated by the elector as the elector's agent, provide a signature or identifying mark. If the elector fails or refuses to sign the elector's name or, if unable to write, fails to provide a fingerprint or other identifying mark, the elector may cast a provisional ballot as provided in 13-13-601, MCA, and these rules.

AUTH: 13-13-603, MCA

IMP: 13-13-114, MCA

REASON: The amendments to (1), (2), and (3) are reasonably necessary to conform to Secretary of State guidelines advising agencies to avoid using citation earmarks in rule text.

44.3.2113 PROVISIONAL VOTING PROCEDURES AT THE POLLING PLACE AND AT THE ELECTION ADMINISTRATOR'S OFFICE - CASTING A BALLOT (1) through (6) remain the same.

AUTH: 13-13-603, MCA

IMP: 13-13-114, 13-13-601, 13-15-107, MCA

REASON: It is reasonably necessary to amend the rule title to clarify that provisional voting procedures are available at either the polling place or at the election administrator's office. This amendment is particularly necessary due to the increased use of late registration.

44.3.2402 DETERMINING A VALID VOTE IN MANUALLY COUNTING AND RECOUNTING PAPER AND OPTI-SCAN BALLOTS (1) Before being counted, each questionable vote on a paper ballot set aside under 13-15-206(2)(a) or (3)(b), MCA, must be reviewed by the counting designated board. The counting board shall evaluate each questionable vote according to the rules below:

(a) and (b) remain the same.

(2) The following general rules shall apply in a count or recount of paper and ~~opti-scan~~ ballots:

(a) ~~two (or more)~~ more than one designated voting areas ~~have~~ has been marked and at least one ~~(or more)~~ mark has been erased, but residue is or is not left. The election officials shall clarify the ballot and cause a vote to be counted for the designated voting area that has been marked;

(b) one designated voting area is marked and ~~a second~~ at least one other designated voting area is marked with a heavy mark and no erasure has been attempted. The election officials shall cause this to be ~~counted~~ designated as an overvote;

(c) the designated voting area has been marked for one response candidate or ballot issue choice and a partially completed mark is made in a at least one other designated voting area. The mark may or may not have some erasure, although for the purpose of this rule erasure is not required. If an erasure is present and it is not sufficient to make the intent of the elector clear, the election officials shall cause this to be counted designated as an overvote; If no erasure attempt is made, the election officials shall cause this to be designated as an overvote;

(d) the designated voting area has been marked for one response candidate or ballot issue choice and a hesitation mark is present within at least one other designated voting area. The election officials shall clarify the ballot and cause a vote to be counted for the designated voting area that has been marked;

(e) the designated voting area has not been marked according to instructions, but the response designated voting area, candidate, or ballot issue choice is circled, underlined, checked, or otherwise clearly marked. The election officials shall clarify the ballot by marking the designated voting area beside the circled vote if the marking of the designated voting area is consistent throughout the

individual's ballot, and cause a vote to be counted for the marked ~~designated voting area choice~~;

(f) the designated voting area has not been marked according to instructions, but there is a connective line or arrow between the ~~response candidate or ballot issue choice~~ and the designated voting area to indicate the vote. The election officials shall ~~clarify the ballot if the connective line or arrow beside the designated voting area is consistent throughout the individual's ballot,~~ and cause a vote to be counted for the marked designated voting area;

(g) more than one designated voting area has been marked, but no clear mark is used to indicate the ~~correct vote~~ intended candidate or ballot issue choice. This includes, but is not necessarily limited to, instances in which more than the allowable choices are marked, and an "X" has been marked in either or both of the designated voting areas. The election officials shall cause this to be ~~counted designated~~ as an overvote;

(h) more than one designated voting area has been marked, but a clear word, mark, or statement is used to indicate the ~~correct~~ intended vote. The election officials shall ~~clarify the ballot and~~ cause a vote to be counted for the designated voting area indicated as the ~~correct~~ intended vote;

(i) a word or statement has been used to indicate the ~~correct~~ intended vote instead of marking the designated voting area according to instructions. The election officials shall ~~clarify the ballot and~~ cause a vote to be counted for the designated voting area indicated as the ~~correct~~ intended vote;

(j) all of the designated voting areas are crossed out. The election officials shall ~~clarify the ballot and~~ cause this to be ~~counted designated~~ as an undervote;

(k) a mark is made outside the designated voting area but close enough to the designated voting area to determine voter intent, and the designated voting area is not marked. The election officials shall cause a vote to be counted for the designated voting area determined as the intended vote;

(l) a ballot is marked with different colors or types of marking instruments. The election officials shall cause votes to be counted as marked by the voter unless it is determined that the ballot is otherwise not valid.

AUTH: 13-15-206, MCA

IMP: 13-15-206, MCA

REASON: The amendment to (1) is reasonably necessary to conform to Secretary of State guidelines advising agencies to avoid using citation earmarks in rule text. The amendments changing the words "election official" to "election officials" are reasonably necessary to clarify that more than one election official is involved in each determination. The amendments to replace language referring to election officials clarifying ballots with language stating that the election officials shall cause votes to be counted or designated as overvotes or undervotes are reasonably necessary to cover a variety of circumstances in which election officials may clarify, duplicate, and/or reject votes. The remaining amendments are reasonably necessary to clarify the intent of current rules and to specify additional rules governing the determinations of valid and invalid votes. Subsections (k) and (l) were added to cover situations which have arisen or are likely to arise since the past adoption and amendment of the rules, and provide sufficient guarantee that all votes

are treated equally among jurisdictions using similar ballot types and voting systems and to further clarify what is a valid vote based on research of other states' valid vote laws and rules based on scenarios that have occurred or may occur, and after consultation with and input from Montana election administrators. Subsection (k) clarifies that if the voter's intent can be discerned, even if the mark is made outside the designated voting area, if no other designated voting area is marked, the vote should be counted for the designated voting area. Subsection (l) clarifies that even though ballot instruction indicates the type of instrument that can be used for marking ballots, ballots marked with other types or colors are still valid.

44.3.2403 DETERMINING A VALID WRITE-IN VOTE IN MANUALLY COUNTING AND RECOUNTING PAPER AND OPTI-SCAN BALLOTS (1) Before being counted, each questionable write-in vote on a paper ballot set aside under 13-15-206(2)(a) or (3)(b), MCA, must be reviewed by the counting designated board. The counting board shall evaluate each questionable vote according to the rules below:

(a) and (b) remain the same.

(2) Except as provided in (3), only votes for declared write-in candidates shall be counted. Except as provided in ARM 44.3.2405, a write-in vote may be counted only if the write-in vote identifies an individual by any of the designations filed pursuant to 13-10-211(1)(a), MCA, and the oval, box, or other designated voting area on the ballot is marked. The following rules shall apply to determining a valid write-in vote in a count or recount of paper ~~and opti-scan~~ ballots, and must be read in conjunction with ARM 44.3.2402:

(a) a name is written in, but the designated write-in voting area is not marked, and no other candidate is selected. The election officials shall cause this to be designated as an undervote;

(a)(b) no candidate name or office is written in, but the designated write-in voting area is marked and no other candidate is selected. The election officials shall count this cause this to be designated as an undervote;

(b)(c) a printed candidate is selected by marking of the designated voting area, and no name is written in, but the designated write-in voting area is marked. The election officials shall count this as a vote cause a vote to be counted for the printed candidate;

(c)(d) a printed candidate is selected by marking of the designated voting area, any individual's name is written in, and the designated write-in voting area is marked. If the name written in is different from the name of the printed candidate selected, the election officials shall count this cause this to be designated as an overvote. If the name written in is the same as the name of the printed candidate selected, the election officials shall count this as a vote cause a vote to be counted for the printed candidate selected.

(d)(e) the designated voting area for a printed candidate is marked and the same name is written in, but the designated write-in voting area is not marked. The election officials shall count this cause a vote to be counted for the marked designated voting area;

(e)(f) comments are written in which do not indicate a clear vote, and no candidate is marked. The election officials shall count this cause this to be designated as an undervote;

~~(f)~~(g) the designated voting area for a printed candidate is marked, a comment is written in, and the corresponding designated write-in voting area is or is not marked. The election officials ~~shall count this~~ cause this to be counted as a vote for the printed candidate, unless the comment creates uncertainty about who the choice is or directs the election official not to count the vote for the printed candidate selected. In the latter case, the election officials ~~shall count this~~ cause this to be designated as an undervote;

(h) at least one printed candidate appears as a candidate for the office and the designated voting area is not marked for any printed candidates, but a name is written in that is not the name of a declared write-in candidate and the corresponding designated write-in voting area is or is not marked. The election officials shall cause this to be designated as an undervote.

(3) through (3)(d) remain the same.

AUTH: 13-15-206, MCA

IMP: 13-10-211, 13-15-206, MCA

REASON: The amendments to (1) and (2) eliminating citation earmarks are reasonably necessary to conform to Secretary of State guidelines advising agencies to avoid using citation earmarks in rule text. The amendments changing the words "election official" to "election officials" are reasonably necessary to clarify that more than one election official is involved in each determination. The amendments to replace language referring to election officials clarifying ballots with language stating that the election officials shall cause votes to be counted or designated as overvotes or undervotes are reasonably necessary to cover a variety of circumstances in which election officials may clarify, duplicate, and/or reject votes. The remaining amendments are reasonably necessary to clarify the intent of current rules and to specify additional rules governing the determinations of valid and invalid votes. The additional rules cover situations which have arisen or are likely to arise since the past adoption and amendment of the rules. Subsections (2)(a) and (2)(h) are added to further clarify what is a valid vote based on research of other states' valid vote laws and rules, based on scenarios that have occurred or may occur, and after consultation and input from Montana election administrators. Subsection (2)(a) clarifies that the designated voting area must be marked in order for a write-in vote to count consistent with 13-15-206(5)(b), MCA. Subsection (2)(h) is necessary to clarify that a write-in vote can only be counted if the name written in is the name of a declared write-in candidate, unless there are no write-in candidates and no candidate names appear on the ballot for that race, consistent with 13-15-206(5), MCA.

44.3.2501 UNITED STATES ELECTORS (1) through (1)(c) remain the same.

(d) ~~in even-year general elections for which a voter information pamphlet is required~~, election administrators must notify United States electors that the voter information pamphlet is available online, which can be accomplished through either:

(i) and (ii) remain the same.

AUTH: 13-21-103, MCA

IMP: 13-13-205, 13-21-103, 13-21-201, MCA

REASON: The amendment is reasonably necessary to clarify that a voter information pamphlet may be printed for elections other than even-year general elections. The authority and implementation statutes were reviewed and updated.

44.3.2505 RECEIVING BALLOTS (1) The election administrator shall receive all facsimile ballots. As the ballots are printed out by the machine, they shall be checked by the election administrator to ensure that ~~they are~~:

- (a) they are readable in that the transmission has not made it impossible for the election judges to determine the elector's intentions; and
- (b) remains the same.

AUTH: 13-21-104, MCA

IMP: 13-21-207, MCA

REASON: The amendment is reasonably necessary to correct a typographical error in the rule text.

44.9.201 INITIATION OF USE IN MULTICOUNTY DISTRICT (1) remains the same.

(2) If the initiative is taken by the applicable governing body, it shall proceed as provided ~~in section 8 of the Act~~ by law, except that the requesting resolution shall be addressed to the election administrator in each affected county.

(3) through (5) remain the same.

(6) If the initiative for the use of the mail ballot option in a multicounty district is taken by the election administrators, then they shall proceed as provided ~~in section 9 of the Act~~ by law, except that some form of ~~written~~ concurrence to both the written plan and the designation of a chief election administrator shall be ~~signed~~ made by each election administrator involved and accompany the written plan.

AUTH: 13-19-105, MCA

IMP: 13-19-201, MCA

REASON: The amendments to (2) and (6) removing the reference to "the Act" and substituting "by law" are reasonably necessary as the mail ballot election statutes were not codified when the administrative rule was originally adopted. The amendment to (6) removing the words "written" and "signed" in reference to concurrences reflects the option for electronic concurrence that may not involve a writing or a signing.

44.9.202 WRITTEN PLAN SPECIFICATIONS (1) through (1)(g) remain the same.

(h) the total number of "places of deposit," other than the election office contemplated, if any, together with the address of each and a description of ~~its~~ nature;

(i) through (l) remain the same.

(m) sample written instructions shall be consistent with 13-19-205-(2)(b), MCA.

AUTH: 13-19-105, MCA

IMP: 13-19-205, MCA

REASON: The word "WRITTEN" is eliminated in the rule title because it is repetitive and unnecessary. The amendment to (1)(h) that eliminates the election office as a place of deposit is reasonably necessary because the election office is always a place of deposit. Therefore, it is not necessary for the election administrator to list the election office on the plan as a place of deposit. Also, the words "of its nature" are deleted in (1)(h) because it is not clear what a place of deposit's "nature" would include. A description of a place of deposit is sufficient. The citation earmark in (1)(m) is eliminated to conform to Secretary of State guidelines advising agencies to avoid using citation earmarks in rule text.

44.9.203 WRITTEN TIMETABLE SPECIFICATIONS (1) The election administrator shall prepare a ~~written~~ timetable for the conduct of the mail ballot election. The timetable shall be in ~~check-off~~ date entry form. It may contain additional activities and may be arranged in a different chronological order but otherwise shall be in substantially the following form:

CALENDAR DATE	ACTIVITY
_____	Copy of written plan to governing body.
_____	Last day for governing body to opt out.
_____	Submission of written plan to secretary of state's office.
_____	Approval by secretary of state.
_____	Publish notice specifying close of registration as provided by 13-2-301, MCA.
_____	Close of registration as provided by 13-2-301, MCA.
_____	Ballots mailed.
_____	Election day.

AUTH: 13-19-105, MCA

IMP: 13-19-205, MCA

REASON: The word "WRITTEN" is eliminated in the rule title because it is repetitive and unnecessary. The amendment to substitute "date entry" for "check off" is reasonably necessary because the form requires entry of calendar dates and is in date entry form, not check off form. The removal of the "Approval by secretary of state" activity is reasonably necessary because the Secretary of State's date of approval is based on the date when the Secretary of State receives the timetable and the counties do not necessarily know the date the Secretary of State receives the timetable.

44.9.303 VOTING BY NONREGISTERED ELIGIBLE ELECTORS

(1) through (3) remain the same.

- (a) duly note the elector's nonregistered status on the return/verification signature envelope, either at the time of voting if in person, or prior to mailing; and
- (b) remains the same.

AUTH: 13-19-105, MCA

IMP: 13-19-304, MCA

REASON: The amendment to (3)(a) is reasonably necessary due to the passage of House Bill 99 by the 2011 Montana Legislature. House Bill 99 generally revised the laws relating to absentee ballots and mail ballots. One of the revisions made was to change the name of the "return/verification envelope" to "signature envelope." Therefore, the amendment reflected above is necessary to ensure the administrative rule language conforms to the amended statutory language.

44.9.306 DISPOSITION OF BALLOTS RETURNED AS UNDELIVERABLE

(1) The election administrator follows the procedures in 13-19-313 and 13-13-245, MCA, for mail Bballots returned by the post office as undeliverable should be filed and shall be and files and securely retaineds said ballots.

(2) and (a) remain the same.

(b) if the elector's ballot is found there, then deliver it to the elector, either in person or; by mail, after the elector updates the elector's address verification, by submitting a new voter registration card or other written update of the elector's address, either in person or by mail; and

~~(c) provide a Change of Address card if appropriate; and~~

(c) document the action taken in a log maintained for that purpose or in the statewide voter registration system.

~~(d) make the appropriate notation in the daily ballot return log.~~

(3) and (4) remain the same.

AUTH: 13-19-105, MCA

IMP: ~~13-19-206~~ 13-19-313, MCA

REASON: The amendments are reasonably necessary due to the passage of House Bill 99 by the 2011 Montana Legislature. House Bill 99 generally revised the laws relating to absentee ballots and mail ballots. The amendments to (1), (2)(b), and (2)(c) conform the administrative rule to statutory changes made in House Bill 99 to clarify that if a mail ballot is undeliverable, the elector must update their address in writing in order to be provided with their ballot or with a replacement ballot. The authority and implementation statutes were reviewed and updated.

44.9.307 PLACES OF DEPOSIT - ELECTION OFFICIAL DUTIES

~~(1) The Act provides that the election administrator may designate one or more places within the political subdivision in which the election is conducted as places of deposit where ballots may be returned by the elector or the elector's agent or designee.~~

~~(2) Whenever a place of deposit is designated, the election administrator shall also designate at least two election officials who are selected in the same manner as provided for the selection of election judges in 13-4-102, MCA, to be~~

~~responsible for all mail ballot election procedures at that place of deposit. Such designated election officials shall:~~

- ~~(1) Election officials, as designated in 13-19-307, MCA, shall:~~
 - ~~(a) be duly appointed and deputized as provided by law 13-19-307, MCA;~~
 - ~~(b) through (d) remain the same.~~
 - ~~(e) be personally available at such place of deposit as specified in 13-19-307(2), MCA;~~
 - ~~(f) remains the same.~~
 - ~~(g) personally ensure that all ballots and other official materials in his their possession are and remain secure at all times.~~
- ~~(3) The election administrator shall provide a transport box, secured as required, for the deposit of ballots returned to each place of deposit.~~

AUTH: 13-19-105, MCA

IMP: 13-19-307, MCA

REASON: The rule title is updated to clarify that the rule addresses election official duties at the places of deposit. Sections (1), (2), and (3) are deleted because the provisions are now addressed in 13-19-307, MCA. The amendment to (1)(e) is to conform to Secretary of State guidelines advising agencies to avoid using citation earmarks in rule text. The amendment to (1)(g) is to apply gender neutrality.

44.9.310 PROCEDURES TO SECURE BALLOTS (1) Ballots and related materials must be secure at all times, including during necessary transport times.

(2) The procedures to secure ballots and materials, including during necessary transport times, shall be substantially similar to procedures used to secure ballots in a regular election.

AUTH: 13-19-105, MCA

IMP: 13-19-105, 13-19-307, MCA

REASON: The rule amendments are reasonably necessary to include the provisions of ARM 44.9.309, which is being repealed. The authority and implementation statutes were reviewed and updated.

44.9.311 RECORDS OF BALLOTS RECEIVED (1) The election administrator shall record in a log or in the statewide voter registration system ~~he~~ maintained for that purpose the number and source of all ballots received at the processing center including:

- (a) through (d) remain the same.

AUTH: 13-19-105, MCA

IMP: 13-19-105, MCA

REASON: The amendment to (1) is reasonably necessary to apply gender neutrality. The amendment to add an alternative option, to record mail ballot receipt information in the statewide voter registration system instead of in a log is reasonably necessary

in order to reflect the option of tracking absentee or mail ballots in the statewide voter registration system and to avoid duplication of effort.

44.9.312 SIGNATURE VERIFICATION PROCEDURES (1) and (a) remain the same.

(b) unopened ~~return/verification~~ signature envelopes shall be counted by the school district clerk (election administrator) placed in transport boxes and the number of ~~return/verification~~ signature envelopes recorded on the ballot transport logs which are to be sealed inside the transport boxes;

(c) the county election administrator shall break the seal on the transport boxes and verify signatures on the ~~return-verification~~ signature envelopes;

(d) remains the same.

(e) the unvalidated ~~return/verification~~ signature envelopes shall be banded together, marked "to be voided and not counted" and placed in the transport boxes with the valid ~~return/verification~~ signature envelopes. The transport boxes shall be resealed and returned to the school district clerk (election administrator) for counting or disposition as provided by law;

(f) through (3) remain the same.

(4) The official shall check and initial each envelope if so required by administrative procedures, as the signature is verified.

AUTH: 13-19-105, MCA

IMP: ~~13-19-310~~ 13-19-304, 13-19-312, MCA

REASON: The amendments to (1) are reasonably necessary due to the passage of House Bill 99 by the 2011 Montana Legislature. House Bill 99 generally revised the laws relating to absentee ballots and mail ballots. One of the revisions made was to change the name of the "return/verification envelope" to "signature envelope."

Therefore, the amendments reflected above are necessary to ensure the administrative rule language conforms to the amended statutory language. The amendment to (4) is reasonably necessary because initialing of each envelope is no longer necessary since the signatures are verified in the statewide voter registration database. However, this amendment will still allow the election administrator to initial the envelope at their discretion. The authority and implementation statutes were reviewed and updated.

44.9.401 TRANSMITTAL ENVELOPE (1) remains the same.

~~(2) The words "OFFICIAL BALLOT - DO NOT DELAY" and the full official return address of the election administrator conducting the election shall appear on the face of the envelope. The flap side of the envelope may have "VOTE AND RETURN PROMPTLY" printed in large type.~~

~~(3) The transmittal envelope may be a window envelope so that the name and address on the enclosed return/verification envelope is visible.~~

~~(4) Addressing the transmittal envelope to the proper elector is not a substitute for also affixing the elector's name and address to the return verification envelope.~~

AUTH: 13-1-202, 13-19-105, MCA

IMP: 13-19-105, MCA

REASON: Section 13-19-105, MCA, gives the Secretary of State the authority to prescribe the form of materials to be used in the conduct of mail ballot elections with advice from the county election administrators. By deleting (2) through (4) in this administrative rule, the Secretary of State is eliminating specific form requirements that can and do change from time to time based on advice from the county election administrators thereby eliminating the need to amend the administrative rule each time a form requirement is changed.

44.9.402 RETURN/VERIFICATION SIGNATURE ENVELOPE (1) The ~~return/verification signature~~ envelope is used by the elector to mail or return the voted ballot to the proper election administrator and it shall be in substantially the same form as prescribed by the secretary of state.

~~(2) The face of the envelope should have the address of the election administrator both as return address and, in larger type, as mailing address. The words "OFFICIAL BALLOT - DO NOT DELAY" and wording that conforms to postal regulations to require the return, not forwarding of undelivered packets should also appear.~~

~~(3) In the upper right hand corner should be the words "Place Sufficient Postage Here (1st Class)" enclosed in a box to indicate stamp placement.~~

~~(4) The flap side of the envelope should show by corner brackets where the elector's name and address is to be placed with the following words printed immediately below: "POSTAL CARRIER: DO NOT DELIVER TO THIS ADDRESS-- (SEE OTHER SIDE)."~~

~~(5) Beside this space an affidavit shall be printed substantially in one of the following forms:~~

~~(a)~~

~~Voter's Affidavit~~

~~I, the undersigned, hereby swear/affirm that I am registered to vote in Montana or that I am entitled to vote in this election because of special provisions; that I have not voted another ballot; that I have completed this ballot in secret; and that the address listed on this envelope is my correct address (or if it is not, my correct mailing address is:~~

~~_____) I understand that attempting to vote more than once is a violation of Montana election laws. I further understand that failure to complete the information below will invalidate my ballot.~~

~~-~~

~~_____
(Signature of Elector) _____ (Today's Date)~~

~~or~~

~~(b)~~

~~Voter's Affidavit~~

~~I, the undersigned, hereby swear/affirm that I am registered to vote in Montana or that I am entitled to vote in this election because of special provisions;~~

~~that I have not voted another ballot; that I have completed this ballot in secret; and that the address listed on this envelope is my correct address (or if the address is not correct, I have completed a change of address form which I have enclosed in this envelope). I understand that attempting to vote more than once is a violation of Montana election laws. I further understand that failure to complete the information below will invalidate my ballot.~~

~~(Signature of Elector)~~

~~(Today's Date)~~

AUTH: 13-1-202, 13-19-105, MCA
IMP: 13-19-105, MCA

REASON: The amendment to (1) changing the name of the "return/verification envelope" to "signature envelope" is reasonably necessary due to the passage of House Bill 99 by the 2011 Montana Legislature. House Bill 99 generally revised the laws relating to absentee ballots and mail ballots. One of the revisions made was to change the name of the "return/verification envelope" to "signature envelope." Therefore, the amendment to (1) reflected above is necessary to ensure the administrative rule language conforms to the amended statutory language. Section 13-19-105, MCA, gives the Secretary of State the authority to prescribe the form of materials to be used in the conduct of mail ballot elections with advice from the county election administrators. By deleting (2) through (5) in this administrative rule, the Secretary of State is eliminating specific form requirements that can and do change from time to time based on advice from the county election administrators thereby eliminating the need to amend the administrative rule each time a form requirement is changed.

44.9.403 SECRECY ENVELOPE (1) The ballot secrecy envelope shall be of a size to fit within the ~~return/verification~~ signature envelope and shall be in substantially the same form as prescribed by the secretary of state. The words "BALLOT SECRECY ENVELOPE" should be printed on the face.
(2) remains the same.

AUTH: 13-19-105, MCA
IMP: 13-19-105, MCA

REASON: The amendment to (1) changing the name of the "return/verification envelope" to "signature envelope" is reasonably necessary due to the passage of House Bill 99 by the 2011 Montana Legislature. House Bill 99 generally revised the laws relating to absentee ballots and mail ballots. One of the revisions made was to change the name of the "return/verification envelope" to "signature envelope." Therefore, the amendment to (1) reflected above is necessary to ensure the administrative rule language conforms to the amended statutory language.

44.9.404 INSTRUCTIONS TO ~~VOTERS~~ ELECTORS (1) Instructions, as approved by the Secretary of State pursuant to 13-19-205, MCA, shall be included with the ballot, the secrecy envelope, and the ~~return-verification~~ signature envelope

as part of the packet mailed to the ~~voter~~ elector. The instructions shall detail the mechanical process which must be followed in order to properly cast the ballot. The instructions shall also:

(a) advise the ~~voter~~ elector that the election is to be by mail ballot only, that ~~he~~ the elector must provide ~~his own~~ postage, if ~~such is the case~~ necessary, and that regular polling places will not open;

(b) list the location where the ~~voter~~ elector may obtain a replacement ballot if ~~his~~ the elector's ballot is not received, or is destroyed, spoiled, or lost;

(c) list the location(s) where the ~~voter~~ elector may deposit ~~his~~ the elector's ballot if ~~he~~ the elector chooses not to mail it; and

(d) advise the ~~voter~~ elector that in order for the ~~voter's~~ elector's ballot to be counted, it must be received in the election administrator's office no later than 8:00 p.m. on the day of the election, except as provided in 13-21-206 and 13-21-207, MCA; and

(e) include the information specified under ARM 44.9.202(1)(m).

AUTH: 13-19-105, MCA

IMP: 13-19-105, 13-19-205, MCA

REASON: The amendments to the rule title and throughout the rule text to substitute the word "elector" for "voter" are reasonably necessary to conform to statutory language. The amendment to (1) to change the reference from "return verification envelope" to "signature envelope" is reasonably necessary due to the passage of House Bill 99 by the 2011 Montana Legislature. House Bill 99 generally revised the laws relating to absentee ballots and mail ballots. One of the revisions made was to change the name of the "return/verification envelope" to "signature envelope." Amendments to (1)(a) and (1)(c) are to ensure that the rule text is gender neutral. In (1)(d), an additional statutory reference is included to clarify that there are two instances whereby ballots may be accepted after 8 p.m. on election day. The amendment to (1)(e) is to eliminate the reference to the rule citation earmark to conform to Secretary of State guidelines advising agencies to avoid using citation earmarks in rule text.

4. The rule as proposed to be amended and transferred provides as follows, new matter underlined, deleted matter interlined:

44.9.312 (44.3.2716) SIGNATURE VERIFICATION PROCEDURES

(1) through (4) remain the same.

AUTH: 13-19-105, MCA

IMP: ~~43-19-310~~ 13-19-309, MCA

REASON: The rule implementation statute was reviewed and amended because 13-19-310, MCA, was repealed effective January 1, 2012. ARM 44.9.312 is being transferred to ARM Title 44, chapter 3, where all the other rules regarding elections reside because the placement of the elections rules in ARM Title 44, chapter 9, has proven confusing for the election administrators and the general public.

5. The Secretary of State proposes to repeal the following rules:

44.3.103 DEFINITIONS

AUTH: 13-3-202, MCA

IMP: 13-3-202, MCA

REASON: The definitions provided in this rule are outdated and/or unnecessary because the words are now either defined or clarified in statute.

44.3.2305 PROCEDURES FOR ABSENTEE AND MAIL BALLOT VOTING -
PRINTING ERROR OR BALLOT DESTROYED - FAILURE TO RECEIVE BALLOT

AUTH: 13-13-603, MCA

IMP: 13-13-204, 13-13-603, 13-15-107, 13-19-313, MCA

REASON: Section 13-13-204, MCA, as amended by the 2011 Montana Legislature in House Bill 99, includes the information contained in this administrative rule thereby eliminating the necessity for this rule.

44.3.2401 BALLOT FORM AND UNIFORMITY

AUTH: 13-12-202, MCA

IMP: 13-12-202, 13-13-205, MCA

REASON: The information provided in this rule is now contained in 13-13-205, MCA, thus eliminating the need for the rule.

44.9.101 INTRODUCTION, SCOPE AND INTENT

AUTH: 13-1-202, 13-19-105, MCA

IMP: 13-19-101, MCA

REASON: The content of this rule is addressed in statute, thereby eliminating the need for the rule.

44.9.102 ROLE OF THE SECRETARY OF STATE

AUTH: 13-19-105

IMP: 13-19-105

REASON: The content of this rule is addressed in statute, thereby eliminating the need for the rule.

44.9.103 DEFINITIONS

AUTH: 13-19-105, MCA

IMP: 13-19-102, MCA

REASON: The definitions provided in this rule are outdated and/or unnecessary because the words are now either defined or clarified in statute.

44.9.301 PROCEDURES FOR VOTING IN PERSON

AUTH: 13-19-105, MCA
IMP: 13-19-303, 13-19-304, MCA

REASON: The provisions of this rule are now addressed in statute, thereby eliminating the need for the rule.

44.9.302 DISPOSITION OF BALLOTS VOTED IN PERSON

AUTH: 13-19-105, MCA
IMP: 13-19-308, MCA

REASON: The provisions of this rule are now addressed in statute, thereby eliminating the need for the rule.

44.9.304 DESIGNATION OF MAILING ADDRESS OR ALTERNATIVE ADDRESS

AUTH: 13-19-105, MCA
IMP: 13-19-308, MCA

REASON: The provisions of this rule are now addressed in statute, thereby eliminating the need for the rule.

44.9.305 REPLACEMENT BALLOTS

AUTH: 13-19-105, MCA
IMP: 13-19-305, MCA

REASON: Sections 13-13-204 and 13-19-305, MCA, as amended by the 2011 Montana Legislature in House Bill 99, ensure that replacement mail ballots and absentee ballots are treated the same. The information contained in ARM 44.9.305 regarding replacement ballots is outdated and has been updated and clarified in statute through the passage of House Bill 99 thereby eliminating the necessity for this rule.

44.9.309 PROCEDURES FOR TRANSPORTING BALLOTS

AUTH: 13-19-105, MCA
IMP: 13-19-105, MCA

REASON: The provisions of this rule have been incorporated into ARM 44.9.310 in this rule notice.

44.9.314 LATE AND LATE TRANSFER REGISTRATION APPLICANTS IN
MAIL BALLOT ELECTIONS

AUTH: 13-19-105, MCA
IMP: 13-2-304, MCA

REASON: The provisions of this rule are now addressed in statute, thereby eliminating the need for the rule.

44.9.315 INACTIVE ELECTORS IN MAIL BALLOT ELECTIONS

AUTH: 13-19-105, MCA
IMP: 13-2-222, 13-19-207, MCA

REASON: The provisions of this rule are now addressed in statute, thereby eliminating the need for the rule.

44.9.405 REGISTER

AUTH: 13-19-105, MCA
IMP: 13-19-305, MCA

REASON: This rule is being repealed because it is outdated due to the use of the statewide voter registration database.

6. The Secretary of State proposes to transfer the following rules:

<u>OLD</u>	<u>NEW</u>	
ARM 44.9.201	ARM 44.3.2701	INITIATION OF USE IN MULTICOUNTY DISTRICT

AUTH: 13-19-105, MCA
IMP: 13-19-201, MCA

<u>OLD</u>	<u>NEW</u>	
ARM 44.9.202	ARM 44.3.2702	PLAN SPECIFICATIONS

AUTH: 13-19-105, MCA
IMP: 13-19-205, MCA

<u>OLD</u>	<u>NEW</u>	
ARM 44.9.203	ARM 44.3.2703	TIMETABLE SPECIFICATIONS

AUTH: 13-19-105, MCA
IMP: 13-19-205, MCA

<u>OLD</u>	<u>NEW</u>
------------	------------

ARM 44.9.204	ARM 44.3.2704	PROPORTIONAL VOTING
AUTH: 13-19-105, MCA IMP: 13-19-302, MCA		
<u>OLD</u> ARM 44.9.303	<u>NEW</u> ARM 44.3.2707	VOTING BY NONREGISTERED ELIGIBLE ELECTORS
AUTH: 13-19-105, MCA IMP: 13-19-304, MCA		
<u>OLD</u> ARM 44.9.306	<u>NEW</u> ARM 44.3.2710	DISPOSITION OF BALLOTS RETURNED AS UNDELIVERABLE
AUTH: 13-19-105, MCA IMP: 13-19-206, MCA		
<u>OLD</u> ARM 44.9.307	<u>NEW</u> ARM 44.3.2711	PLACES OF DEPOSIT – ELECTION OFFICIAL DUTIES
AUTH: 13-19-105, MCA IMP: 13-19-307, MCA		
<u>OLD</u> ARM 44.9.310	<u>NEW</u> ARM 44.3.2714	PROCEDURES TO SECURE BALLOTS
AUTH: 13-19-105, MCA IMP: 13-19-105, MCA		
<u>OLD</u> ARM 44.9.311	<u>NEW</u> ARM 44.3.2715	RECORDS OF BALLOTS RECEIVED
AUTH: 13-19-105, MCA IMP: 13-19-105, MCA		
<u>OLD</u> ARM 44.9.401	<u>NEW</u> ARM 44.3.2720	TRANSMITTAL ENVELOPE
AUTH: 13-1-202, 13-19-105, MCA IMP: 13-19-105, MCA		
<u>OLD</u> ARM 44.9.402	<u>NEW</u> ARM 44.3.2721	SIGNATURE ENVELOPE
AUTH: 13-1-202, 13-19-105, MCA		

IMP: 13-19-105, MCA

<u>OLD</u>	<u>NEW</u>	
ARM 44.9.403	ARM 44.3.2722	SECRECY ENVELOPE

AUTH: 13-19-105, MCA

IMP: 13-19-105, MCA

<u>OLD</u>	<u>NEW</u>	
ARM 44.9.404	ARM 44.3.2723	INSTRUCTIONS TO ELECTORS

AUTH: 13-1-202, 13-19-105, MCA

IMP: 13-19-105, MCA

REASON: The Secretary of State finds it reasonably necessary to transfer the administrative rules concerning Mail Ballot Elections into ARM Title 44, chapter 3, where all the other rules regarding elections reside because the placement of the rules in ARM Title 44, chapter 9, has proven confusing for the election administrators and the general public.